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Attorneys for Defendant
CHEVRON STATIONS INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Catherine Tremblay, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Chevron Stations, Inc., a Delaware
Corporation,

Defendant.

CASE NO. CV 07-6009 EDL

**DECLARATION OF AARON L.
AGENBROAD IN SUPPORT OF
DEFENDANT'S MOTION TO STAY
DISCOVERY PENDING
RESOLUTION OF ITS SOON TO BE
FILED MOTION FOR JUDGMENT
ON THE PLEADINGS**

Date: July 29, 2008
Time: 9:00 a.m.
Courtroom: E, 15th Floor

Complaint Filed: November 28, 2007

Hon. Elizabeth D. LaPorte

DECLARATION OF AARON AGENBROAD

I, Aaron Agenbroad, declare and state as follows:

1. I am an attorney at law, duly admitted to practice before the courts of the State of California and before this court. I am a partner with the law firm of Jones Day and one of the principal attorneys representing Defendant Chevron Stations Inc. ("Defendant") in this matter. I submit this declaration in support of Defendant's Motion to Stay Discovery Pending Resolution Of Its Soon To Be Filed Motion For Judgment On The Pleadings. The facts stated here are within my personal knowledge. If called upon to do so, I could testify to these facts.

2. Attached hereto as **Exhibit A** is a true and correct conformed copy of plaintiff's Second Amended Complaint in *Sandoval v. Chevron Stations, Inc.*, Case No. CV 061690.

3. Attached hereto as **Exhibit B** is a true and correct conformed copy of plaintiff's Complaint in *Morris v. Chevron Stations, Inc.*, Case No. BC361380.

I declare under penalty of perjury under the laws of the United States and the State of California that the above is true and correct.

Executed this 18th day of June, 2008, at San Francisco, California.

/S/ Aaron L. Agenbroad
Aaron L. Agenbroad

SFI-586144v1

Exhibit A

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Attorneys for Plaintiff
 Dalila Sandoval a.k.a. Dalila Cordon

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

DALILA SANDOVAL a.k.a. DALILA
 CORDON, individually and on behalf of other
 members of the general public similarly
 situated,

Plaintiff,

vs.

CHEVRON STATIONS, INC., and DOES 1
 through 20,

Defendants.

CASE NO. CV 061690

CLASS ACTION

[Judge Vernon F. Smith, Department F]

**PLAINTIFF'S SECOND AMENDED
 COMPLAINT**

1. Failure to Pay Minimum Wages
2. Failure to Pay Overtime Wages
3. Failure to Provide Meal Periods
4. Failure to Allow Rest Periods
5. Failure to Pay All Wages Each Pay Period
6. Failure to Pay All Wages Timely Upon Termination
7. Failure to Provide Accurate Wage Statements
8. Unfair Competition
9. Civil Penalties

Complaint Filed: April 21, 2006

1 Plaintiff Dalila Sandoval, a.k.a. Dalila Cordon ("Plaintiff") on behalf of herself and all
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class action under Code of Civil Procedure Section 382. Plaintiff, on
5 behalf of herself and all other current and former non-exempt employees employed at Chevron
6 gas stations in California during the applicable liability periods, seeks unpaid minimum and
7 overtime wages and interest thereon for off-the-clock work, statutory penalties for missed meal
8 breaks and missed rest periods, waiting time penalties for late payment of final wages, statutory
9 penalties for failure to provide accurate wage statements, civil penalties under Labor Code
10 Section 2699, restitution, injunctive relief and attorney fees and costs to which Plaintiff and
11 other class members are entitled.

12 2. Plaintiff is member of and the named representative for the Class and each of the
13 Subclasses defined in paragraph 10 below. The term Class includes Plaintiff and all other
14 persons who are members of one or more of the Subclasses defined in paragraph 10.

15 **JURISDICTION AND VENUE**

16 3. Venue is proper in this judicial district and the County of Marin because work
17 was performed by Plaintiff and other members of the Class for defendants in the County of
18 Marin and defendants' obligations under California law to Plaintiff and other members of the
19 Class arose and were breached in the County of Marin.

20 4. The California Superior Court has jurisdiction in this matter because Plaintiff is
21 a resident of California and defendants are qualified to do business in California and regularly
22 conduct business in California. Further, there is no federal question at issue as the claims herein
23 are based solely on California law.

24 **THE PARTIES**

25 **A. Plaintiff and the Class**

26 5. At all relevant times, Plaintiff was employed by defendants as a non-exempt
27 employee at Chevron gas stations located in Simi Valley. During the liability period, Plaintiff
28 was suffered and permitted to perform work for defendants without being paid wages for every

1 hour worked. At times, Plaintiff was required to work shifts lasting over five hours without
2 being allowed to take a thirty minute uninterrupted meal break. At times, Plaintiff was required
3 to work shifts lasting over four hours without being allowed to take a ten minute uninterrupted
4 rest break. During the liability period, Plaintiff did not receive accurate wage statements
5 showing the proper amount of time she worked and the proper amount of pay owed to her for all
6 work time, including all overtime hours worked. During the liability period, defendants did not
7 pay Plaintiff all wages earned each pay period on the payday for the pay period, and defendants
8 did not pay Plaintiff all wages earned during her employment timely upon the termination of her
9 employment.

10 6. The members of the Class are identifiable, similarly situated persons who are
11 current or former non-exempt employees of defendants who worked at Chevron gas stations
12 who were not 1) paid minimum wages for all hours worked; 2) paid overtime wages for all
13 overtime hours worked; 3) provided meal periods; 4) allowed to take rest periods; 5) paid for all
14 hours worked during each pay period; 6) provided accurate wage statements; and/or 7) paid all
15 earned wages timely upon termination of their employment.

16 **B. Defendants**

17 7. Chevron Stations, Inc. ("Chevron") is a Delaware corporation doing business in
18 California and throughout the United States. Plaintiff is informed and believes that Chevron
19 operates over 200 gas stations in California and maintains offices in San Ramon, California. At
20 all relevant times, Chevron was the employer of Plaintiff and other members of the Class at the
21 time Chevron breached legal obligations to them as described herein. Plaintiff is informed and
22 believes that Chevron continues to breach those legal obligations owed to Class members
23 currently employed by Chevron.

24 8. Plaintiff is ignorant of the true names, capacities, relationships and extent of
25 participation in the conduct herein alleged, of the defendants sued herein as DOES 1 through 20,
26 but is informed and believes and thereon alleges that all defendants (collectively referred to as
27 "Defendants") are legally responsible for the wrongful conduct alleged herein and therefore sues
28 by such fictitious names the defendants whose identities are not yet known to Plaintiff. Plaintiff

1 will amend this complaint to allege the true names and capacities of the DOE defendants when
2 ascertained.

3 9. Plaintiff is informed and believes and thereon alleges that each defendant acted in
4 all respects pertinent to this action as the agent of the other defendants, carried out a joint
5 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
6 are legally attributable to the other defendants.

7 **CLASS ACTION ALLEGATIONS**

8 10. Plaintiff brings this action on behalf of herself and all other similarly situated
9 persons as a class action pursuant to Code of Civil Procedure Section 382. The members of the
10 Class are defined as all current and former non-exempt employees employed at a Chevron gas
11 station in California at any time since April 21, 2002 through the date notice is mailed to the
12 class. The Class is comprised of the following Subclasses:

13 **Unpaid Wages Subclass:** All current and former non-exempt employees employed at a
14 Chevron gas station in California at any time since August 16, 2003.

15 **Meal and Rest Period Subclass:** All current and former non-exempt employees
employed at a Chevron gas station in California at any time since April 21, 2005.

16 **Final Wages Subclass:** All former non-exempt employees whose employment at a
17 Chevron gas station in California terminated at any time since August 16, 2003.

18 **Wage Statement Subclass:** All current and former non-exempt employees
employed at a Chevron gas station in California at any time since April 21, 2005.

19 **Civil Penalties Subclass:** All current and former non-exempt employees employed at a
20 Chevron gas station in California at any time since April 21, 2005.

21 11. This action has been brought and may be maintained as a class action pursuant to
22 Code of Civil Procedure Section 382 because there is a well-defined community of interest
23 among many persons who comprise a readily ascertainable class.

24 a. The Class members are so numerous that the individual joinder of all of them as
25 plaintiffs is impractical. While the exact number of Class members is unknown to
26 Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there are not
27 less than 500 Class members. Therefore, joinder of all Class members as individual
28 plaintiffs is impractical.

b. Common questions of law and fact exist as to members of the Class and

1 predominate over any questions which affect only individual members of the Class. These
2 common questions include, but are not limited to:

- 3 (1) Did Defendants violate Labor Code Section 1197 by not paying Class
4 members minimum wages for all hours worked?
- 5 (2) Did Defendants violate Labor Code Section 510 by not paying Class
6 members overtime wages for all overtime hours worked?
- 7 (3) Did Defendants violate Labor Code Section 512 by not providing Class
8 members with meal periods?
- 9 (4) Did Defendants violate Labor Code Section 512 by not allowing Class
10 members to take rest periods?
- 11 (5) Did Defendants violate Labor Code Section 204 by not paying Class
12 members for all wages earned during each pay period?
- 13 (6) Did Defendants violate Labor Code Section 226(a) by not furnishing
14 Class members with accurate wage statements?
- 15 (7) Did Defendants violate Labor Code Section 201 or 202 by not paying
16 Class members wages due upon termination in a timely manner?
- 17 (8) Are Defendants liable to Class members for meal period penalties under
18 Labor Code Section 226.7?
- 19 (9) Are Defendants liable to Class members for rest period penalties under
20 Labor Code Section 226.7?
- 21 (10) Are Defendants liable to Class members for waiting time penalties under
22 Labor Code Section 203?
- 23 (11) Are Defendants liable to Class members for wage statement penalties
24 under Labor Code Section 226(e)?
- 25 (12) Did Defendants violate the Unfair Competition Law, Business and
26 Professions Code Section 17200, *et seq.*, by engaging in the unlawful
27 practices alleged herein?
- 28 (13) Is injunctive relief appropriate to ensure Defendants' compliance with

obligations under the Labor Code with respect to members of the Class currently employed at Chevron gas stations?

(14) Are Class members entitled to attorney fees?

(15) Are Class members entitled to prejudgment interest?

(16) Are Class members entitled to civil penalties under Labor Code Section 2699?

c. Plaintiff is a member of the Class, and her claim is typical of the claims of the other Class members. Plaintiff is informed and believes and thereon alleges that Defendants have policies or practices of 1) suffering or permitting non-exempt employees to work without pay outside their scheduled shift times; 2) not providing non-exempt employees who work shifts longer than five hours with meal periods; 3) not allowing non-exempt employees to take rest periods; 4) not paying employees for all wages earned during each pay period; 5) not providing employees with accurate wage statements; and/or 6) not paying employees timely all earned wages due upon termination.

d. Plaintiff will adequately and fairly protect the interests of the members of the Class. Plaintiff has no interest adverse to the interests of absent Class members. Plaintiff is represented by legal counsel who has substantial class action experience in civil litigation and employment law.

e. A class action is superior to other available means for fair and efficient adjudication of the claims of the Class and would be beneficial for the parties and the court. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. Further, the monetary amounts due to many individual Class members are likely to be relatively small, and the burden and expense of individual litigation would make it difficult or impossible for individual members of the Class to seek and obtain relief. A class action will serve an important public interest by permitting such individuals to effectively pursue recovery of the sums owed to them. Further, class litigation

1 prevents the potential for inconsistent or contradictory judgments raised by individual
2 litigation.

3 FIRST CAUSE OF ACTION

4 **FAILURE TO PAY MINIMUM WAGES**

5 **(By Plaintiff and the Unpaid Wages Subclass against all Defendants)**

6 12. Plaintiff incorporates by reference paragraphs 1 through 11 above.

7 13. At all relevant times, Plaintiff and the other members of the Unpaid Wages
8 Subclass were employees of Defendants covered by Labor Code Section 1197, Wage Order 7-
9 2001 and Wage Order MW-2001.

10 14. Pursuant to Labor Code Section 1197, Wage Order 7-2001 and Wage Order
11 MW-2001, Plaintiffs and other members of the Unpaid Wages Subclass were entitled to receive
12 minimum wages for all hours worked.

13 15. Defendants failed to pay Plaintiff and other members of the Unpaid Wages
14 Subclass for all hours worked in violation of Labor Code Section 1197, Wage Order 7-2001 and
15 Wage Order MW-2001. Plaintiffs are informed and believe and thereon allege that at all
16 relevant times within the applicable limitations period, Defendants maintained and continue to
17 maintain a policy or practice of suffering or permitting non-exempt employees to work off the
18 clock without compensating them for their hours worked off the clock.

19 16. As a result of Defendants' unlawful conduct, Plaintiffs and other members of the
20 Unpaid Wages Subclass have suffered damages in an amount, subject to proof, to the extent
21 they were not paid minimum wages for all hours actually worked.

22 17. Pursuant to Labor Code Sections 1194 and 1194.2, Plaintiffs and other members
23 of the Unpaid Wages Subclass are entitled to recover the full amount of their unpaid minimum
24 wages, interest thereon, liquidated damages, reasonable attorney fees and costs of suit.

25 SECOND CAUSE OF ACTION

26 **FAILURE TO PAY OVERTIME WAGES**

27 **(By Plaintiff and the Unpaid Wages Subclass against all Defendants)**

28 18. Plaintiff incorporates by reference paragraphs 1 through 17 above.

1 19. At all relevant times, Plaintiff and the other members of the Unpaid Wages
2 Subclass were employees of Defendants covered by Labor Code Section 510 and Wage Order 7-
3 2001.

4 20. Pursuant to Labor Code Section 510 and Wage Order 7-2001, Plaintiff and the
5 other members of the Unpaid Wages Subclass were entitled to overtime wages payable at the
6 rate of at least one and one-half times their regular rate of pay for all work in excess of eight
7 hours in one workday or in excess of forty hours in one workweek and payable at the rate of at
8 least twice the regular rate of pay for all work in excess of twelve hours in one workday.

9 21. Defendants failed to pay Plaintiff and other members of the Unpaid Wages
10 Subclass for overtime in accordance with Labor Code Section 510 and Wage Order 7-2001.
11 Plaintiff is informed and believes and thereon alleges that at all relevant times within the
12 applicable limitations period, Defendants maintained and continue to maintain a policy or
13 practice of suffering or permitting non-exempt employees to work overtime hours off the clock
14 without compensating them for their overtime hours worked off the clock.

15 22. As a result of Defendants' unlawful conduct, Plaintiff and other members of the
16 Unpaid Wages Subclass have suffered damages in an amount, subject to proof, to the extent
17 they were not paid overtime wages for all overtime hours worked.

18 23. Pursuant to Labor Code Section 1194, Plaintiff and members of the Unpaid
19 Wages Subclass are entitled to recover the full amount of their unpaid overtime wages, interest
20 thereon, reasonable attorney fees and costs of suit.

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO PROVIDE MEAL PERIODS**

23 **(By Plaintiff and the Meal and Rest Period Subclass against all Defendants)**

24 24. Plaintiff incorporates by reference paragraphs 1 through 11 above.

25 25. At all relevant times, Plaintiff and the other members of the Meal and Rest
26 Period Subclass were employees of Defendants covered by Labor Code Sections 512 and 226.7
27 and Wage Order 7-2001.

28 26. Pursuant to Labor Code Sections 512 and 226.7 and Wage Order 7-2001,

1 Plaintiff and the other members of the Meal and Rest Period Subclass were entitled to a meal
2 period of at least 30 minutes for each workday they worked more than five hours.

3 27. Defendants failed to provide Plaintiff and other members of the Meal and Rest
4 Period Subclass meal periods in accordance with Labor Code Sections 512 and 226.7 and Wage
5 Order 7-2001. Plaintiff is informed and believes and thereon alleges that at all relevant times
6 within the applicable limitations period, Defendants maintained and continue to maintain a
7 policy or practice of not providing non-exempt employees with a meal period when they worked
8 more than five hours in a workday.

9 28. Defendants failed to provide Plaintiff and other members of the Meal and Rest
10 Period Subclass the additional hour of pay required by Labor Code Section 226.7 and Wage
11 Order 7-2001. Plaintiff is informed and believe and thereon alleges that at all relevant times
12 within the applicable limitations period, Defendants maintained and continue to maintain a
13 policy or practice of not paying additional pay to non-exempt employees for missed meal
14 periods.

15 29. As a result of Defendants' unlawful conduct, Plaintiff and members of the Meal
16 and Rest Period Subclass have suffered damages in an amount, subject to proof, to the extent
17 they were not paid additional pay owed for missed meal periods.

18 30. Pursuant to Labor Code Section 218, Plaintiff and members of the Meal and Rest
19 Period Subclass are entitled to recover the full amount of their unpaid additional pay.

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO ALLOW REST PERIODS**

22 **(By Plaintiff and the Meal and Rest Period Subclass against all Defendants)**

23 31. Plaintiff incorporates by reference paragraphs 1 through 11 above.

24 32. At all relevant times, Plaintiff and the other members of the Meal and Rest
25 Period Subclass were employees of Defendants covered by Labor Code Sections 512 and 226.7
26 and Wage Order 7-2001.

27 33. Pursuant to Labor Code Sections 512 and 226.7 and Wage Order 7-2001,
28 Plaintiff and the other members of the Meal and Rest Period Subclass were entitled to rest

1 periods of at least 10 minutes for each four hour period of work.

2 34. Defendants failed to allow Plaintiff and other members of the Meal and Rest
3 Period Subclass rest periods in accordance with Labor Code Section 512 and 226.7 and Wage
4 Order 7-2001. Plaintiff is informed and believes and thereon alleges that at all relevant times
5 within the applicable limitations period, Defendants maintained and continue to maintain a
6 policy or practice of not allowing non-exempt employees to take rest periods for each four hours
7 of work.

8 35. Defendants failed to provide Plaintiff and other members of the Meal and Rest
9 Period Subclass the additional hour of pay required by Labor Code Section 226.7 and Wage
10 Order 7-2001. Plaintiff is informed and believe and thereon alleges that at all relevant times
11 within the applicable limitations period, Defendants maintained and continue to maintain a
12 policy or practice of not paying additional pay to non-exempt employees for missed rest periods.

13 36. As a result of Defendants' unlawful conduct, Plaintiff and members of the Meal
14 and Rest Period Subclass have suffered damages in an amount, subject to proof, to the extent
15 they were not paid additional pay owed for missed rest periods.

16 37. Pursuant to Labor Code Section 218, Plaintiff and members of the Meal and Rest
17 Period Subclass are entitled to recover the full amount of their unpaid additional pay.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PAY ALL WAGES EARNED EACH PAY PERIOD**

20 **(By Plaintiff and the Unpaid Wages Subclass against all Defendants)**

21 38. Plaintiff incorporates by reference paragraphs 1 through 23 above.

22 39. At all relevant times, Plaintiff and the other members of the Unpaid Wages
23 Subclass were employees of Defendants covered by Labor Code Section 204.

24 40. Pursuant to Labor Code Section 204, Plaintiff and the other members of the
25 Unpaid Wages Subclass were entitled to receive on regular paydays all wages earned for the pay
26 period corresponding to the payday.

27 41. Defendants failed to pay Plaintiff and other members of the Unpaid Wages
28 Subclass for all wages earned each pay period on the regular payday for the pay period.

1 Plaintiff is informed and believes and thereon alleges that at all relevant times within the
2 applicable limitations period, Defendants maintained and continue to maintain a policy or
3 practice of suffering or permitting non-exempt employees to work off the clock without
4 compensating them for their regular or overtime hours worked off the clock.

5 42. As a result of Defendants' unlawful conduct, Plaintiff and members of the
6 Unpaid Wages Subclass have suffered damages in an amount, subject to proof, to the extent
7 they were not paid for all wages earned during each pay period.

8 43. Pursuant to Labor Code Sections 218, 218.5 and 218.6, Plaintiff and members of
9 the Unpaid Wages Subclass are entitled to recover the full amount of their unpaid wages,
10 interest thereon, reasonable attorney fees and costs of suit.

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO PAY WAGES TIMELY UPON TERMINATION**

13 **(By Plaintiff and the Final Wages Subclass against all Defendants)**

14 44. Plaintiff incorporates by reference paragraphs 1 through 23 above.

15 45. At all relevant times, Plaintiff and the other members of the Final Wages
16 Subclass were employees of Defendants covered by Labor Code Sections 201 or 202.

17 46. Pursuant to Labor Code Sections 201 or 202, Plaintiff and members of the Final
18 Wages Subclass were entitled upon termination to timely payment of all wages earned and
19 unpaid prior to termination. Discharged employees were entitled to payment of all wages
20 earned and unpaid prior to discharge immediately upon termination. Employees who resigned
21 were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours
22 after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to
23 payment of all wages earned and unpaid prior to resignation at the time of resignation.

24 47. Defendants failed to pay Plaintiff and members of the Final Wages Subclass all
25 wages earned and unpaid prior to termination timely in accordance with Labor Code Section
26 201 or 202. Plaintiff is informed and believes and thereon alleges that at all relevant times
27 within the applicable limitations period, Defendants maintained and continue to maintain a
28 policy or practice of suffering or permitting non-exempt employees to work off the clock

1 without compensating them for their regular or overtime hours worked off the clock.

2 48. Defendants' failure to pay Plaintiff and members of the Final Wages Subclass all
3 wages earned prior to termination in accordance with Labor Code Sections 201 or 202 was
4 willful. Defendants had the ability to pay all wages earned by employees prior to termination in
5 accordance with Labor Code Sections 201 or 202, but intentionally adopted policies or practices
6 incompatible with the requirements of Labor Code Sections 201 or 202.

7 49. Pursuant to Labor Code Sections 201 or 202, Plaintiff and members of the Final
8 Wages Subclass are entitled to all wages earned prior to termination that Defendants did not pay
9 them.

10 50. Pursuant to Labor Code Section 203, Plaintiff and members of the Final Wages
11 Subclass are entitled to continuation of their wages, from the day their earned and unpaid wages
12 were due upon termination until paid, up to a maximum of 30 days.

13 51. As a result of Defendants' unlawful conduct, Plaintiff and members of the Final
14 Wages Subclass have suffered damages in an amount, subject to proof, to the extent they were
15 not paid for all wages earned prior to termination.

16 52. As a result of Defendants' unlawful conduct, Plaintiff and members of the Final
17 Wages Subclass have suffered damages in an amount, subject to proof, to the extent they were
18 not paid all continuation wages owed under Labor Code Section 203.

19 53. Pursuant to Labor Code Sections 218, 218.5 and 218.6, Plaintiff and members of
20 the Final Wages Subclass are entitled to recover the full amount of their unpaid wages under
21 Labor Code Sections 201 or 202, continuation wages under Labor Code Section 203, interest on
22 all unpaid wages, reasonable attorney fees and costs of suit.

23 **SEVENTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

25 **(By Plaintiff and the Wage Statement Subclass against all Defendants)**

26 54. Plaintiff incorporates by reference paragraphs 1 through 23 above.

27 55. At all relevant times, Plaintiff and the other members of the Wage Statement
28 Subclass were employees of Defendants covered by Labor Code Section 226.

1 56. Pursuant to Labor Code Section 226(a), Plaintiff and the other members of the
2 Wage Statement Subclass were entitled to receive, semimonthly or at the time of each payment
3 of wages, an accurate itemized statement showing gross wages earned; net wages earned; and
4 all applicable hourly rates in effect during the pay period and the corresponding number of hours
5 worked at each hourly rate by the employee.

6 57. Defendants failed to provide Plaintiff and members of the Wage Statement
7 Subclass accurate itemized statements in accordance with Labor Code Section 226(a). Plaintiff
8 is informed and believes and thereon alleges that at all relevant times within the applicable
9 limitations period, Defendants maintained and continue to maintain a policy or practice of
10 suffering or permitting non-exempt employees to work off the clock without compensating them
11 for their regular or overtime hours worked off the clock.

12 58. Defendants' failure to provide Plaintiff and members of the Wage Statement
13 Subclass with accurate wage statements was knowing and intentional. Defendants had the
14 ability to provide Plaintiff and members of the Wage Statement Subclass with accurate wage
15 statements but intentionally provided wage statements that Defendants knew were not accurate.

16 59. As a result of Defendants' unlawful conduct, Plaintiff and members of the Wage
17 Statement Subclass have suffered injury. The absence of accurate information on their wage
18 statements has prevented earlier challenges to Defendants' unlawful pay practices, required
19 discovery and mathematical computations to determine the amount of wages owed, caused
20 difficulty and expense in attempting to reconstruct time and pay records, and led to the
21 submission of inaccurate information about wages and amounts deducted from wages to state
22 and federal government agencies.

23 60. Pursuant to Labor Code Section 226(e), Plaintiff and members of the Wage
24 Statement Subclass are entitled to recover fifty dollars for the initial pay period in which a
25 violation of Labor Code Section 226 occurred and one hundred dollars for each violation of
26 Labor Code Section 226 in a subsequent pay period, not to exceed an aggregate penalty of four
27 thousand dollars per employee.

28 61. Pursuant to Labor Code Section 226(g), Plaintiff and members of the Wage

1 Statement Subclass are entitled to bring an action for injunctive relief to ensure Defendants'
2 compliance with Labor Code Section 226(a). Injunctive relief is warranted because Defendants
3 continue to provide currently employed members of the Wage Statement Subclass with
4 inaccurate wage statements in violation of Labor Code Section 226(a) and currently employed
5 members of the Wage Statement Subclass have no adequate legal remedy for the continuing
6 injuries that will be suffered as a result of Defendants' ongoing unlawful conduct. Injunctive
7 relief is the only remedy available for ensuring Defendants' compliance with Labor Code
8 Section 226(a).

9 62. Pursuant to Labor Code Sections 226(e) and 226(g), Plaintiff and members of the
10 Wage Statement Subclass are entitled to recover the full amount of penalties due under Labor
11 Code Section 226(e), reasonable attorney fees and costs of suit.

12 EIGHTH CAUSE OF ACTION

13 UNFAIR COMPETITION

14 (By Plaintiff and the Class against all Defendants)

15 63. Plaintiff incorporates by reference paragraphs 1 through 62 above.

16 64. The unlawful conduct of Defendants alleged herein constitutes unfair
17 competition within the meaning of Business and Professions Code Section 17200. Due to
18 unfair and unlawful business practices in violation of the Labor Code, Defendants have gained a
19 competitive advantage over other comparable companies doing business in the State of
20 California that comply with their obligations to compensate employees for all earned wages as
21 required by law.

22 65. As a result of Defendants' unfair competition as alleged herein, Plaintiff and
23 members of the Class have suffered injury in fact and lost money or property. Plaintiff and
24 members of the Class have been deprived of their rights to minimum wages, overtime wages,
25 meal periods, rest periods, additional pay for missed meal periods, additional pay for missed rest
26 periods, timely payment of all earned wages each pay period; accurate wage statements; and/or
27 timely payment of all earned wages due upon termination of employment.

28 66. Pursuant to Business and Professions Code Section 17203, Plaintiff and members

1 of the Class are entitled to restitution of all wages and other monies rightfully belonging to them
2 that Defendants failed to pay them and wrongfully retained by means of their unlawful and
3 unfair business practices.

4 67. Pursuant to Business and Professions Code Section 17203, Plaintiff and members
5 of the Class are entitled to an injunction to prevent the continuation of Defendants' unlawful and
6 unfair business practices that constitute unfair competition. Injunctive relief is warranted
7 because Defendants continue to engage in unlawful and unfair business practices with respect to
8 currently employed members of the Class, and such members of the Class have no adequate
9 legal remedy for the continuing injuries that will be suffered as a result of Defendants' ongoing
10 unlawful conduct. Injunctive relief is the only remedy available to prevent Defendants from
11 continuing to engage in unlawful and unfair business practices.

12 68. Plaintiff and members of the Class are entitled to recover reasonable attorney
13 fees in connection with their unfair competition claims pursuant to Code of Civil Procedure
14 Section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

15 NINTH CAUSE OF ACTION

16 CIVIL PENALTIES

17 (By Plaintiff and the Civil Penalties Subclass against all Defendants)

18 69. Plaintiff incorporates by reference paragraphs 1 through 62 above.

19 70. Since one year preceding the filing of the complaint in this action (the "Civil
20 Penalty Period"), Chevron has violated Labor Code Sections 201, 202, 203, 204, 226(a), 226.7,
21 510, 512 and 1197.

22 71. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf
23 of himself and other current or former employees, to bring a civil action to recover civil
24 penalties pursuant to the procedures specified in Labor Code Section 2699.3.

25 72. Plaintiff has complied with the procedures for bringing suit specified in Labor
26 Code Section 2699.3. By letter dated and postmarked September 27, 2006, Plaintiff gave
27 written notice to the Labor and Workforce Development Agency ("LWDA") and to Chevron of
28 the specific provisions of the Labor Code alleged to have been violated, including the facts and

1 theories to support the alleged violations. A true and correct copy of this letter is attached
2 hereto as Exhibit 1. No notice from the LWDA of an intent to investigate was provided to
3 Plaintiff within 33 days of the postmark date of the letter from Plaintiff.

4 73. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and members of the
5 Civil Penalties Subclass are entitled to recover civil penalties for Chevron's violations of the
6 Labor Code during the Civil Penalty Period in the following amounts:

7 a. For violation of Labor Code Section 201 or 202, one hundred dollars (\$100) for
8 each employee per pay period for the initial violation and two hundred dollars (\$200) for
9 each employee per pay period for each subsequent violation [penalty amounts established by
10 Labor Code Section 2699(f)(2)];

11 b. For violation of Labor Code Section 203, one hundred dollars (\$100) for each
12 employee per pay period for the initial violation and two hundred dollars (\$200) for each
13 employee per pay period for each subsequent violation [penalty amounts established by
14 Labor Code Section 2699(f)(2)];

15 c. For violation of Labor Code Section 204, one hundred dollars (\$100) for the
16 initial failure to pay each employee, and for each subsequent violation, two hundred dollars
17 (\$200) for each failure to pay each employee plus 25% of the amount unlawfully withheld
18 [penalty amounts established by Labor Code Section 210];

19 d. For violation of Labor Code Section 226(a), two hundred fifty dollars (\$250) per
20 employee for initial violation and one thousand dollars (\$1,000) per employee for each
21 subsequent violation [penalty amounts established by Labor Code Section 226.3];

22 e. For violation of Labor Code Section 226.7, one hundred dollars (\$100) for each
23 employee per pay period for the initial violation and two hundred dollars (\$200) for each
24 employee per pay period for each subsequent violation [penalty amounts established by
25 Labor Code Section 2699(f)(2)];

26 f. For violation of Labor Code Section 510, fifty dollars (\$50) for each
27 employee for each pay period in addition to an amount sufficient to recover unpaid wages
28 for the initial violation, and for each subsequent violation, one hundred dollars (\$100) for

1 each employee for each pay period in addition to an amount sufficient to recover unpaid
2 wages [penalty amounts established by Labor Code Section 558].

3 g. For violation of Labor Code Section 512, fifty dollars (\$50) for each
4 employee for each pay period in addition to an amount sufficient to recover unpaid wages
5 for the initial violation, and for each subsequent violation, one hundred dollars (\$100) for
6 each employee for each pay period in addition to an amount sufficient to recover unpaid
7 wages [penalty amounts established by Labor Code Section 558]; and.

8 h. For violation of Labor Code Section 1197, one hundred dollars (\$100) for each
9 underpaid employee for each pay period for the initial violation, and for each subsequent
10 violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period
11 [penalty amounts established by Labor Code Section 1197.1].

12 74. Pursuant to Labor Code Section 2699(g), Plaintiff and members of the Class are
13 entitled to an award of reasonable attorney fees and costs in connection with their claims for
14 civil penalties.

15 PRAYER FOR RELIEF

16 WHEREFORE, Plaintiff on behalf of herself and all others similarly situated, prays for
17 relief and judgment against Defendants as follows:

18 CLASS CERTIFICATION

- 19 A. An order that the action be certified as a class action;
- 20 B. An order that Plaintiff be certified as the representative of the Class;
- 21 C. An order that counsel for Plaintiff be confirmed as Class counsel;

22 ON THE FIRST CAUSE OF ACTION

- 23 D. Damages for unpaid minimum wages;
- 24 E. Prejudgment interest;
- 25 F. Liquidated damages under Labor Code Section 1194.2;
- 26 G. Reasonable attorney fees under Labor Code Section 1194;

27 ON THE SECOND CAUSE OF ACTION

- 28 H. Damages for unpaid overtime wages;

1 I. Prejudgment interest;

2 J. Reasonable attorney fees under Labor Code Section 1194;

3 **ON THE THIRD CAUSE OF ACTION**

4 K. Damages for unpaid additional pay owed for missed meal periods;

5 **ON THE FOURTH CAUSE OF ACTION**

6 L. Damages for unpaid additional pay owed for missed rest periods;

7 **ON THE FIFTH CAUSE OF ACTION**

8 M. Damages for unpaid wages owed each pay period;

9 N. Prejudgment interest;

10 O. Reasonable attorney fees under Labor Code Section 218.5;

11 **ON THE SIXTH CAUSE OF ACTION**

12 P. Damages for unpaid wages owed upon termination;

13 Q. Damages for unpaid continuation wages under Labor Code Section 203;

14 R. Prejudgment interest;

15 S. Reasonable attorney fees under Labor Code Section 218.5;

16 **ON THE SEVENTH CAUSE OF ACTION**

17 T. Penalties under Labor Code Section 226(e);

18 U. An order requiring Defendants to comply with Labor Code Section 226(a);

19 V. Reasonable attorney fees under Labor Code Section 226(e) and/or 226(g);

20 **ON THE EIGHTH CAUSE OF ACTION**

21 W. Restitution of all wages and other monies rightfully belonging to members of the
22 Class that Defendants failed to pay them and wrongfully retained by means of
23 their unlawful and unfair business practices;

24 X. An order enjoining Defendants from further unfair and unlawful business
25 practices in violation of Business and Professions Code Section 17200;

26 Y. Reasonable attorney fees under Code of Civil Procedure Section 1021.5, the
27 substantial benefit doctrine and/or the common fund doctrine;

28 ///

1 ON THE NINTH CAUSE OF ACTION

2 Z. Civil penalties under Labor Code Section 2699;

3 AA. Attorney fees under Labor Code Section 2699(g);

4 ON ALL CAUSES OF ACTION

5 BB. Judgment in favor of Plaintiff and the Class and against Defendants;

6 CC. Costs of suit; and

7 DD. Such other relief as the Court deems just and proper.

8 DATED: November 7, 2006

SPIRO MOSS BARNES HARRISON & BARGE LLP

9
10 By: 

Gregory N. Karasik
Attorneys for Plaintiff

11
12 DEMAND FOR JURY TRIAL

13 Plaintiff demands a trial by jury for herself and the Class on all claims so triable.

14 DATED: November 7, 2006

SPIRO MOSS BARNES HARRISON & BARGE LLP

15
16 By: 

Gregory N. Karasik
Attorneys for Plaintiff

Exhibit No. 1

SPIRO MOSS BARNES HARRISON & BARGE LLP
Attorneys at Law

11377 W. Olympic Boulevard • Fifth Floor • Los Angeles, California 90064
Telephone (310) 235-2468 • Facsimile (310) 235-2456

September 27, 2006

VIA CERTIFIED MAIL

Victoria L. Bradshaw
Secretary, Labor & Workforce Development Agency
801 K Street
Sacramento, California 95814

Re: Labor Code 2699 Notice Letter
On Behalf of Aggrieved Employee Dalila Sandoval

Employer: Chevron Stations, Inc.

Dear Ms. Bradshaw:

This letter shall constitute notification under Labor Code § 2699.3(a)(1) that Dalila Sandoval alleges that her former employer, Chevron Stations, Inc. ("CSI") has violated various provisions of the Labor Code. Ms. Sandoval contends that, within the applicable limitations periods, CSI:

1. Failed to provide Ms. Sandoval and other similarly situated employees with meal periods in accordance with Labor Code Section 512;
2. Failed to provide Ms. Sandoval and other similarly situated employees with rest periods in accordance with Labor Code Section 512;
3. Failed to provide Ms. Sandoval and other similarly situated employees with additional pay for missed meal periods in accordance with Labor Code Section 226.7;
4. Failed to provide Ms. Sandoval and other similarly situated employees with additional pay for missed rest periods in accordance with Labor Code Section 226.7;
5. Failed to pay Ms. Sandoval and other similarly situated employees minimum wages for all hours worked in accordance with Labor Code Section 1197;
6. Failed to pay Ms. Sandoval and other similarly situated employees overtime for all overtime hours worked in accordance with Labor Code Section 510;
7. Failed to pay Ms. Sandoval and other similarly situated employees all wages owed each payday in accordance with Labor Code Section 204;

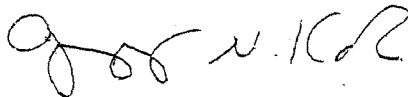
Victoria L. Bradshaw
September 27, 2006
page 2

8. Failed to pay Ms. Sandoval and other similarly situated employees all wages owed at the time of termination in accordance with Labor Code Section 201 or 202;
9. Failed to pay Ms. Sandoval and other similarly situated employees continuation wages in accordance with Labor Code Section 203; and
10. Failed to provide Ms. Sandoval and other similarly situated employees with accurate wage statements in accordance with Labor Code Section 226(a).

Please advise within the required time period whether or not the LWDA intends to investigate these alleged violations. If no such notice is provided within 33 calendar days of the postmark date of this letter, Ms. Sandoval may commence an action for civil penalties pursuant to Labor Code Section 2699.

Sincerely,

SPIRO MOSS BARNES HARRISON & BARGE LLP



Gregory N. Karasik

cc: Steven B. Katz, Esq (counsel for CSI)

PROOF OF SERVICE
Sandoval v. Chevron Stations, Inc.
MCSC Case No. CV 061690

I am over the age of eighteen years and not a party to the within action. My business address is 11377 W. Olympic Blvd., Fifth Floor, Los Angeles, CA 90064-1683. I am employed at that address at the firm of Spiro Moss Barness Harrison & Barge LLP. On the date set forth below I served the document(s) described as

PLAINTIFF'S SECOND AMENDED COMPLAINT

on all the interested parties in this action, by placing: ☐ the original ☒ true copies thereof enclosed in sealed envelopes, addressed as follows, which addresses are the addresses last given by the respective addressees on any document filed in the above case and served on Spiro Moss Barness Harrison & Barge LLP:

Steven B. Katz
JONES DAY
555 South Flower Street, Fiftieth Floor
Los Angeles, CA 90071-2300
Telephone: (213) 489-3939
Facsimile: (213) 243-2539

☒ **BY MAIL:** I am readily familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service. On the date set forth below, at the firm of Spiro Moss Barness Harrison & Barge LLP at the above address, I placed the envelope(s) containing said document(s), sealed, for collection and mailing on that date with the United States Postal Service following ordinary business practices. Under the above-mentioned practice of Spiro Moss Barness Harrison & Barge LLP, the above document(s) would be deposited with the United States Postal Service on that same day in the ordinary course of business, with postage thereon fully prepaid at Los Angeles, California.

☐ **BY MAIL:** On the date set forth below I deposited such envelope(s), in a mailbox regularly maintained by the U.S. Postal Service in Los Angeles County, California. The envelope(s) was/were deposited with postage thereon fully prepaid.

☐ **BY METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY** On the date set forth below I deposited such envelope(s) in a box or other facility regularly maintained by the express service carrier, or delivered such envelope(s) to an authorized courier or driver authorized by the express service carrier to receive documents, with delivery fees paid or provided for. The envelope was an envelope or package designated by the express service carrier.

☒ **(BY FACSIMILE)** On the date set forth below, at approximately 5:30 p.m., I transmitted the above document(s) from fax machine number (310) 235-2456, in compliance with transmission as provided in California Rule of Court 2008. The fax number(s) that I used are shown above or on the attached Service List, along with the names of recipients and the interested parties. The fax machine I used complied with California Rule of Court 2003(3). The transmission was reported as complete and without error by the machine, which properly issued the transmission report.

1 ☐ (BY PERSONAL SERVICE -- AT OFFICE OF ATTORNEYS): I personally served said
2 document(s) on the date set forth below, by leaving them, inside the envelope(s) clearly labeled
3 to identify the attorney(s) being served, at the offices of the attorney(s) listed above, at the
address(es) listed above, with a receptionist or other person having charge of the office(s),
between the hours of 9:00 a.m. and 5:00 p.m.

4 ☐ (BY PERSONAL SERVICE -- BY HAND DELIVERY TO ATTORNEYS): I caused to
5 be personally served said document(s) on the date set forth below, by handing them to one of the
6 attorneys of record for each party as listed above (in each case of a law firm listed above as
attorneys of record, I handed the document(s) to an attorney who is a member of that law firm).

7 ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

8 ☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this
9 court at whose direction the service was made.

10 Executed at Los Angeles County, California, on November 7, 2006.

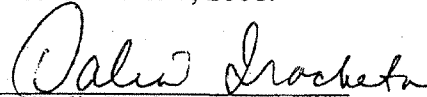
11 
12 Dalia Iracheta

Exhibit B

ORIGINAL

FILED

LOS ANGELES SUPERIOR COURT

NOV 02 2006

JOHN A. GILLES, Executive Officer/Clerk

Deputy

Case assigned to
Judge

Victoria Chaney

Joseph Lavi, Esq. (State Bar No. 209776)
N. Nick Ebrahimian, Esq. (State Bar No. 219270)
LAVI & EBRAHIMIAN, LLP
8383 Wilshire Blvd., Suite 840
Beverly Hills, California 90211
Telephone (323) 653-0086
Facsimile (323) 653-0081

Attorneys for PLAINTIFF
HAROLD EUGENE MORRIS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES-CENTRAL

HAROLD EUGENE MORRIS on behalf of
himself and others similarly situated.

CLASS ACTION

Case No.: 80361380

PLAINTIFF,

PLAINTIFF'S COMPLAINT FOR
DAMAGES AND EQUITABLE RELIEF
FOR

vs.

CHEVRON STATIONS, INC.; and DOES 1 to
100, Inclusive.

DEFENDANTS.

1. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§ 510, 1194, 1194.2 AND 1197, WAGE ORDER NO. 7;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE §§ 510, 1194, 1194.2, 1197, 1199 AND WAGE ORDER NO. 7;
3. FAILURE TO PAY WAGES AT CONTRACTUAL RATES IN VIOLATION OF LABOR CODE §§ 201, 202 AND 204;
4. FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE §§ 226.7, 512, AND WAGE ORDER NO. 7;
5. FAILURE TO FURNISH TIMELY AND ACCURATE WAGE

CI/CASE: 80361380 LEM/DEH:
RECEIPT #: CCH422869050
DATE PAID: 11/02/06 03:56:30 PM
PAYMENT: \$970.00
RECEIVED:
CHECK: \$970.00
CASH:
CHANGE:
CASH:

PLAINTIFF'S COMPLAINT FOR DAMAGES

STATEMENTS IN VIOLATION OF
LABOR CODE §§ 226 AND 226.3

6. VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION ACT
("UCL"), BUSINESS AND
PROFESSIONS CODE, § 17200.
ET SEQ.

DEMAND FOR JURY TRIAL

NOW COMES PLAINTIFF HAROLD EUGENE MORRIS (hereinafter
"PLAINTIFF") and alleges and complains against DEFENDANTS CHEVRON STATIONS, INC.
and DOES 1 to 100, Inclusive, (hereinafter collectively "DEFENDANTS") as follows:

I. INTRODUCTION

1. This is a class action, under Code of Civil Procedure § 382, seeking unpaid wages
and interest thereon for off-the-clock work, remedies for missed meal periods, waiting time
penalties in the form of continuation wages for failure to timely pay employees, remedies for failure
to provide accurate wage statements, injunctive relief and other equitable relief, reasonable
attorney's fees and costs, brought on behalf of Plaintiff and others similarly situated.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under Article 6 of the California
Constitution and Code of Civil Procedure § 410.10.

3. This Court has jurisdiction over Plaintiff's and the Class Members' claims for unpaid
minimum wages and overtime under Labor Code § 1194.

4. This Court has jurisdiction over Plaintiff's and the Class Members' claims for
waiting time penalties and meal period violations under Labor Code § 218.

5. This Court has jurisdiction over Plaintiff's and the Class' pay statement claims

PLAINTIFF'S COMPLAINT FOR DAMAGES

1 pursuant to Labor Code § 226.

2 6. This Court has jurisdiction over Plaintiff's and the Class Members' claims for
3 injunctive relief, and restitution of unpaid wages and other ill-gotten benefits arising from
4 Defendants' unlawful and/or unfair business practices under Business & Professions Code §§ 17200
5 *et seq.*

6
7 7. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.5
8 because the acts, conduct, and events alleged herein occurred, as to a large number of class
9 members, including Plaintiff, in Los Angeles County. Defendants operate gas stations in Los
10 Angeles County as well as in other counties within the State of California.

11 **III. PARTIES**

12
13 8. Plaintiff Harold E. Morris is a Los Angeles County resident. Mr. Morris was
14 employed by Defendants on an hourly basis to perform retail clerk duties (designated herein as
15 "retail clerk") at Chevron gas stations owned by Defendants in Los Angeles County.

16 9. Plaintiff appears in this action on behalf of himself and on behalf of all others
17 similarly situated.

18
19 10. Defendant Chevron Stations, Inc. is a Delaware corporation doing business in
20 California and throughout the United States. Chevron Stations, Inc. does business in Los Angeles
21 County, California and at relevant times employed Plaintiff and numerous other hourly paid retail
22 clerks in Los Angeles County, throughout California and the rest of the United States. Defendant
23 Chevron Stations, Inc. has significant contacts with Los Angeles County and the activities
24 complained of herein occurred in whole or in part, in Los Angeles County.

25
26 11. Plaintiff is informed and believes and thereon alleges that Defendants Does 1 through
27 100 are corporations, or are other business entities or organizations of a nature unknown to Plaintiff.
28

1 12. Plaintiff is unaware of the true names of Defendants Does 1 through 100. Plaintiff
2 sues said defendants by said fictitious names, and will amend this complaint when the true names
3 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
4 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
5 named Defendants is in some manner responsible for the events and allegations set forth in this
6 complaint.
7

8 13. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each
9 Defendant was an employer, was the principal, agent, partner, joint venturer, officer, director,
10 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
11 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
12 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
13 of the other defendants so as to be liable for their conduct with respect to the matters alleged in this
14 complaint. Plaintiff is further informed and believes and thereon alleges that each defendant acted
15 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,
16 each defendant knew or should have known about, authorized, ratified, adopted, approved,
17 controlled, aided and abetted the conduct of all other defendants. As used in this complaint,
18 "Defendant" means "Defendants and each of them," and refers to the Defendants named in the
19 particular cause of action in which the word appears and includes Defendants Chevron Stations,
20 Inc., Chevron Corporation and Does 1 through 100.
21
22

23 14. At all times mentioned herein, each Defendant was the co-conspirator, agent, servant,
24 employee, and/or joint venturer of each of the other defendants and was acting within the course and
25 scope of said conspiracy, agency, employment, and/or joint venture and with the permission and
26 consent of each of the other Defendants.
27
28

1 15. Plaintiff makes the allegations in this complaint without any admission that, as to any
2 particular allegation, Plaintiff bears the burden of pleading, proving, or persuading, and Plaintiff
3 reserves all of Plaintiff's rights to plead in the alternative.

4 **IV. FACTS COMMON TO CAUSES OF ACTION**

5
6 16. Plaintiff is informed and believes and thereon alleges that Defendants operated over
7 200 gas stations throughout California during the liability period.

8 17. At all times during the liability period, Defendants employed Plaintiff and numerous
9 other similarly situated hourly paid retail clerks at gas stations located in Los Angeles County and
10 throughout the state of California.

11 18. At all times during the liability period, Plaintiff and other similarly situated
12 employees at gas stations were assigned to various locations and at times were required to work
13 shifts lasting over five (5) hours and were not provided and did not take a thirty (30) minute,
14 uninterrupted meal break that commenced before the conclusion of their shifts, or before they
15 completed over 5 hours of work.

16
17 19. At all times during the liability period, Plaintiff and other similarly situated retail
18 clerks at gas stations were suffered permitted and required, by the nature of their work, to continue
19 working "off-the-clock" several minutes per shift, after their shift ended, counting the cash received
20 during their shift, reconciling their cash registers, cigarette and/or lottery sales, in addition to
21 performing other shift-change related procedures as required by Defendants such as stocking shelves.
22 Plaintiff and all other similarly situated employees at gas stations were not compensated for this
23 off-the-clock work.

24
25 20. At all times during the liability period, Plaintiff and other similarly situated retail
26 clerks at gas stations did not receive pay checks that reflected the additional hour of pay owed them
27
28

1 for missed statutory meal breaks, or reflected the additional money owed them for working off-the-
2 clock.

3 **V. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

4 21. Plaintiff brings this action on behalf of himself, on behalf of all others similarly
5 situated, and on behalf of the General Public, and as a member of a Class defined as follows:

6
7 **A. All Current and Former Hourly Paid Retail Clerks Employed by**
8 **Defendants in California at Any Time Beginning Four (4) Years Prior to the**
9 **Filing of the Complaint Through the Date Notice Is Mailed to the Class ("Retail**
10 **Clerk Class").**

11 22. This action has been brought and may be properly maintained as a class action
12 pursuant to the provisions of California Code of Civil Procedure § 382 and other applicable law.

13 23. **Numerosity of the Classes** - Code of Civ. Proc. § 382: Members of the Class are so
14 numerous that their individual joinder is impracticable. Plaintiff estimates that there are no less than
15 500 persons in the Retail Clerk Class. The precise number of Class members and their addresses
16 are unknown to Plaintiff, however Plaintiff is informed and believes that the number can be
17 obtained from Defendants' records. Class members may be notified of the pendency of this action
18 by electronic mail, the Internet, other mail, or published notice.

19 24. **Existence of Predominance of Common Questions of Fact and Law** - Code of
20 Civ. Proc. § 382: Common questions of law and fact exist as to all members of the Class. These
21 questions predominate over any questions effecting only individual members of the class. These
22 common legal and factual question include:

23 (a) Whether Defendants failed to pay members of the Retail Clerk Class for all
24 hours worked by suffering and permitting them to perform post shift duties for which they were not
25
26
27
28

1 paid;

2 (b) Whether Defendants failed to provide members of the Retail Clerk Class
3 timely, thirty (30) minute, uninterrupted meal breaks as contemplated by California law for work
4 periods that lasted more than five (5) hours;

5 (c) Whether Defendants violated IWC Wage Order No. 7-2000, 7-2001 and
6 Labor Code §§ 226.7 and 512 by failing to afford members of the Retail Clerk Class timely meal
7 periods;
8

9 (d) Whether Defendants committed unlawful business acts or practice within the
10 meaning of Business and Professions Code §§ 17200 *et seq.*;

11 (e) Whether Retail Clerk Class members are entitled to unpaid wages, waiting
12 time penalties and other relief in conjunction with their off-the-clock claims;
13

14 (f) Whether the remedy for an employer's failure to provide meal periods as
15 required by the law is a premium wage for the hardship of missing a lawful meal period, or a
16 penalty;

17 (g) Whether, as a consequence of Defendants' unlawful conduct, the Class
18 members are entitled to restitution, and/or equitable relief;
19

20 (h) Whether Defendants affirmative defenses, if any, raise any common issues of
21 law or fact as to Plaintiff, and the Class members as a whole.

22 25. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class
23 because Plaintiff, as a Retail Clerk was exposed to the same unlawful business practices as the
24 members of the class. Plaintiff sustained the same types of damages and losses that members of the
25 class sustained.
26

27 26. **Adequacy:** Plaintiff is an adequate representative of the Class because his interests
28

1 do not conflict with the interests of the members of the Class he seeks to represent. Plaintiff has
2 retained counsel competent and experienced in complex class action litigation and Plaintiff intends
3 to prosecute this action vigorously. The interests of the members of the Class will be fairly and
4 adequately protected by Plaintiff and his counsel.
5

6 27. **Superiority and Substantial Benefit:** The class action is superior to other available
7 means for the fair and efficient adjudication of Plaintiff's and the Class members' claims. The
8 damages suffered by each individual Class member may be limited. Damages of such magnitude
9 are small given the burden and expense of individual prosecution of the complex and extensive
10 litigation necessitated by Defendants' conduct. Further, it would be virtually impossible for the
11 Class members to redress the wrongs done to them on an individual basis. Even if members of the
12 Class themselves could afford such individual litigation, the court system could not. Individualized
13 litigation increases the delay and expense to all parties and the court system, due to the complex
14 legal and factual issues of the case. By contrast, the class action device presents far fewer
15 management difficulties, and provides the benefits of single adjudication, economy of scale, and
16 comprehensive supervision by a single court.
17

18 28. In the alternative, the Class should be certified because:
19

20 (a) The prosecution of separate actions by individual members of the Class
21 would create a risk of inconsistent or varying adjudications with respect to individual Class
22 members which would establish incompatible standards of conduct for Defendants;
23

24 (b) The prosecution of separate actions by individual members of the Class
25 would create a risk of adjudications with respect to them, which would, as a practical matter, be
26 dispositive of the interests of the other Class members not parties to the adjudications, or
27 substantially impair or impede their ability to protect their interests; and
28

(c) Defendants have acted or refused to act on grounds generally applicable to the Class, and/or the General Public, thereby making appropriate final and injunctive relief with respect to the class as a whole.

FIRST CAUSE OF ACTION

UNLAWFUL FAILURE TO PAY MINIMUM WAGES **Violation of California Labor Code §§ 510, 1194, 1194.2, 1197, 1199;** **Wage Order Nos. 7-2000 and 7-2001** **(Against All Defendants)**

29. Plaintiff incorporates paragraphs 1 through 28 as if fully set forth here.

30. Pursuant to California Labor Code §§ 510, 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked, as required by the applicable IWC Wage Order, 8 Cal. Admin. Code § 11070, (Wage Order No. 7).

31. Pursuant to IWC Wage Order No. 7, at all times material hereto "hours worked" included "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

32. During the liability period, Plaintiff and all the other Retail Clerk Class members were suffered, permitted and required, to perform work "off-the-clock," for which they received no pay.

33. During the liability period, under the provisions of IWC Wage Order No. 7, Plaintiff and each Retail Clerk Class member should have received not less than the minimum wage in a sum according to proof for the time worked, but not compensated.

34. For all hours that Plaintiff and the Retail Clerk Class members worked and received no pay, they are entitled to not less than the California minimum wage and, pursuant to Labor Code § 1194.2 (a) liquidated damages in an amount equal to the unpaid minimum wages and interest

1 including counting cash received during their shift, reconciling the cash register, stoking shelves and
 2 other shift transition procedures before each employee was free to leave the workplace.

3 41. Plaintiff is informed and believes, and thereon alleges, that the work days in which
 4 Plaintiff and the Retail Clerk Class members were not paid for all hours worked, counting unpaid
 5 work time, were often work days of more than eight (8) hours in a day, and the work weeks in which
 6 the employees were not paid for all hours worked, counting unpaid work time, were often work
 7 weeks of greater than forty (40) hours in a week.

9 42. Defendants failed to pay Plaintiff and the other Retail Clerk Class members 1.5 times
 10 their regular rate of pay for all hours of work greater than eight (8) in a day or forty (40) in a week
 11 by failing to pay for all time worked in work days over 8 hours and work weeks over 40 hours.

13 43. For all work time over eight (8) hours in a day and over forty (40) in a week, that the
 14 Class members were not properly paid at the appropriate rate, Class members are entitled to
 15 overtime pay at one and one-half times their true regular rate, plus interest thereon, and pursuant to
 16 Labor Code § 1194, attorneys' fees and costs according to proof.

18 44. For those Retail Clerk Class members who no longer work for Defendants, pursuant
 19 to Labor Code §§ 201-203, these Retail Class members are entitled to waiting-time penalties for
 20 Defendants failure to properly pay them overtime pay when due.

22 45. WHEREFORE, Plaintiff and the Retail Class members are entitled to their unpaid
 23 overtime wages, and waiting time penalties according to proof, interest, attorney fees, and costs
 24 pursuant to Labor Code section 1194, subdivision (a).

25 THIRD CAUSE OF ACTION

26 **FAILURE TO PAY WAGES AT CONTRACTUAL RATES**

27 Violation of Labor Code § § 201, 202 and 204

28 (Against All Defendants)

PLAINTIFF'S COMPLAINT FOR DAMAGES

1 46. Plaintiff incorporates paragraphs 1 through 45 as if fully set forth here.

2 47. Pursuant to California Labor Code §§ 201, 202, and 204, Defendants have statutory
3 obligations to pay employees the wages they earn twice during each calendar month or if a
4 collective bargaining agreement provides a different pay arrangement, as often as the collective
5 bargaining agreement provides (Labor Code § 204); and Defendants have a further statutory
6 obligation to pay employees the wages they earned, when they resign and/or when they are
7 discharged. (Labor Code §§ 201 and 202).

8
9 48. Plaintiff and the members of the Class earned wages at implied in fact contractual
10 straight time and overtime rates for the "off-the-clock" work that they were suffered and permitted
11 to perform, that has not been paid, as required by Labor Code § 204 as to all currently employed and
12 formerly employed Class Members, and as required by Labor Code §§ 201 and/or 202 as to all
13 formerly employed Class Members. The applicable rates are reflected in the pay they received for
14 the work that was actually paid.

15
16 49. For all hours that Plaintiff and the Class Members earned wages that they were not
17 paid in compliance with Labor Code §§ 201, 202, 204, they are entitled to such wages at their
18 proper rates, interest and attorney's fees according to proof.

19
20 50. Defendants willfully failed and refused, and continue to willfully fail and refuse, to
21 pay Plaintiff and Class Members the amounts owed.

22 51. A number of the Class Members no longer work for Defendants due to discharge or
23 resignation. Pursuant to Labor Code 201, 202, and 203, Plaintiff and these Class Members are
24 entitled to waiting-time penalties over the willful failure of Defendants to timely pay them the
25 minimum wages owing to them upon their terminations.

26
27 52. WHEREFORE, Plaintiff and the Class Members are entitled to pay at their
28

1 suffered irreparable harm and monetary damages entitling them to both injunctive relief and
 2 restitution. Plaintiff, on behalf of himself and on behalf of the Retail Clerk Class, seeks damages
 3 and all other relief allowable including premium pay for each work shift longer than five (5) hours
 4 during which the employee was not provided a full thirty (30) minute uninterrupted meal break,
 5 attorneys fees, prejudgment interest, and as to those employees no longer employed by Defendants,
 6 waiting time penalties pursuant to Labor Code §§ 200 et seq.

8 58. WHEREFORE, Plaintiff and the Retail Clerk Class members are entitled to one hour
 9 of pay for each missed meal break, pre-judgment interest, attorneys' fees and costs, and for the
 10 Retail Clerk Class members no longer employed, waiting time penalties pursuant to Labor Code
 11 §203.

13 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS** 16 **Violation of California Labor Code §§ 226, 226.3** 17 **Retail Clerk Class Members** **(Against All Defendants)**

18 59. Plaintiff incorporates preceding paragraphs 1 through 58 as if fully set forth here.

19 60. California Labor Code § 226 (a) requires employers to semi-monthly or at the time
 20 each payment of wages is made, to furnish each hourly paid employee with a statement itemizing,
 21 inter alia, the gross wages earned by the employee, and total hours worked. Labor Code § 226 (b)
 22 provides that if an employer knowingly and intentionally fails to provide a statement itemizing, inter
 23 alia the total gross wages earned by the employee, and hours worked by the employee, then the
 24 employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial
 25 violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars
 26 (\$4000).
 27
 28

SIXTH CAUSE OF ACTION

63. Plaintiff incorporates preceding paragraphs 1 through 62 as if fully set forth here.

65. Plaintiff asserts these claims as he is representative of an aggrieved group and as a private attorney general on behalf of the General Public and other persons who been exposed to Defendants unlawful acts and/or practices and are owed wages that the Defendants should be required to pay or reimburse under the restitutionary remedy provided by California Business & Professions Code §§ 17200, et seq.

PLAINTIFF'S COMPLAINT FOR DAMAGES

1 pay for all hours worked, as alleged above, constitute unlawful and/or unfair business acts and/or
 2 practices within the meaning of California Business & Professions Code §§ 17200, et seq.

3 67. As a result of their unlawful and/or unfair acts, Defendants have reaped and continue
 4 to reap unfair benefits and illegal profits at the expense of Plaintiff and Retail Clerk Class Members.
 5 Defendants should be enjoined from this activity and provide restitution by restoring to Plaintiff
 6 and the other Retail Clerk Class members the wrongfully withheld wages.

7 68. The acts and practices alleged in the preceding paragraphs occurred in connection
 8 with Defendants' conduct of trade and commerce in California.

9 69. Defendants' misconduct as alleged herein gave these Defendants an unfair
 10 competitive advantage over their competitors.

11 70. As a direct and proximate result of the aforementioned acts, Defendants, and each of
 12 them, received and continue to hold monies which Plaintiff and the other Retail Clerk Class
 13 Members have a possessory interest in.

14 71. Defendants' conduct offends the established public policy of the State of California
 15 and is immoral, unethical, oppressive, unscrupulous and substantially injurious.

16 72. Pursuant to Section 17203 of the UCL, Plaintiff seeks an order of this Court
 17 enjoining Defendants from continuing to engage in the unlawful and/or unfair business practices,
 18 and any other act prohibited by the UCL.

19 73. WHEREFORE, Plaintiff and the other Retail Clerk Class members are entitled to
 20 equitable relief, including restitution, attorney fees and costs, declaratory relief, and a permanent
 21 injunction enjoining Defendants from their unlawful and/or unfair activity.

22 ///

23 ///

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 PLAINTIFF'S COMPLAINT FOR DAMAGES

1 PRAYER

2 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated and also on
3 behalf of the General Public, prays for judgment against Defendants as follows:

4 A. An order certifying this case as a class action and appointing Plaintiff and his counsel
5 to represent the class;

6 B. For all unpaid minimum wages and liquidated damages due Plaintiff and each Class
7 Member on their minimum wage claim;

8 C. For all unpaid overtime wages due Plaintiff and each Class Member;

9 D. For all unpaid contractual rate wages due Plaintiff and each Class Member;

10 E. For one hour of wages due Plaintiff and each Class Member for each work period of
11 more than five (5) hours within which they did not receive an uninterrupted thirty (30) minute meal
12 break;

13 F. For an order awarding restitution of the unpaid wages due Plaintiff and Class
14 members;

15 G. For an order awarding restitution of the meal break premium wages withheld by
16 Defendants, together with interest thereon to the date of payment to the Class members;

17 H. For an order requiring Defendants to immediately cease their unlawful and wrongful
18 conduct as set forth above; enjoining Defendants from continuing to fail to provide its employees
19 with lawfully required uninterrupted thirty (30) minute meal break periods, and enjoining
20 defendants from failing to properly pay Class members for all work time;

21 I. For waiting time penalties for all Class members whose employment with
22 Defendants ended;

23 J. For reasonable attorneys' fees and the costs of this action;

1 K. For pre-judgment interest at the maximum legal rate; and

2 L. For such other relief as this Court may deem just and proper.

3 Dated: November 1, 2006

Respectfully submitted,

4 **LAVI & EBRAHIMIAN, LLP**

5
6
7 By: 

Joseph Lavi, Esq.
Attorneys for PLAINTIFF and
CLASS MEMBERS
HAROLD EUGENE MORRIS

DEMAND FOR TRIAL BY JURY

PLAINTIFF HAROLD EUGENE MORRIS and CLASS MEMBERS hereby
demands trial by jury.

Dated: November 1, 2006

Respectfully submitted,

LAVI & EBRAHIMIAN, LLP

By: 

Joseph Lavi, Esq.

Attorneys for PLAINTIFF and
CLASS MEMBERS
HAROLD EUGENE MORRIS